



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2013

Ms. Ashley D. Fourt
Assistant District Attorney
Office of the Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2013-14554

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 496826.

Tarrant County (the "county") received a request for information pertaining to a specified address and information related to two projects conducted on a specified date. You state you have released some of the responsive information to the requestor. We understand you have redacted certain information pursuant to section 552.136(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request was received by the county. This ruling does not address the public availability of the information that is not responsive to the request, and the county is not required to release this information in response to this request.

¹Section 552.136 of the Government Code permits a governmental body to redact the information described in section 552.136(b) without the necessity of requesting a decision from this office. *See id.* § 552.136(c)-(e) (providing procedures for redaction of information).

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the responsive information consists of confidential communications between attorneys for the county and county employees, in their capacities as clients. You indicate these communications were made in the furtherance of the rendition of legal services to the county and were not intended to be disclosed to third parties. However, we note a small portion of this information consists of communications with a third party you have not identified as privileged. Therefore, the county may not withhold these non-privileged e-mails, which we have marked, under section 552.107(1) of the Government Code. Nevertheless, based on your representations and our review, we conclude the remaining responsive information generally constitutes privileged attorney-client communications the county may withhold under section 552.107(1). We note, however, some of the otherwise privileged e-mail strings at issue include e-mails or attachments that were sent to or received from non-privileged parties. Furthermore, if the information sent to or received from the non-privileged parties is removed from the otherwise privileged communications, it is responsive to the present request for information. Therefore, to the extent the non-privileged communications, which we have marked, exist separate and apart from the otherwise privileged communications, they may not be withheld under section 552.107(1).

The remaining responsive information includes an e-mail address subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address we have marked does not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the county must withhold the marked e-mail address under section 552.137, unless the owner of the address affirmatively consents to its release. *See id.* § 552.137(b).

In summary, except for the information we have marked for release, the county may generally withhold the responsive information under section 552.107(1) of the Government Code; however, to the extent the non-privileged communications, which we have marked, exist separate and apart from the otherwise privileged communications, they may not be withheld on that basis. The county must withhold the e-mail address we have marked under section 552.137, unless the owner of the e-mail address affirmatively consents to its release. The county must release the remaining responsive information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/bhf

²The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 496826

Enc. Submitted documents

c: Requestor
(w/o enclosures)